

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

KEVIN SMITH  
Plaintiff,

v.

Detective Orongoes, Badge #4078  
of and for 73rd Precinct,  
1470 E. New York Av.  
Brooklyn, N.Y. 11212-5007,

Other unknown Officers,

EDWIN DIAZ,

Employed at:

Copperwood Realestate  
New York, New York

LAURA LEMLE

177 East 87th St. Suite 501  
New York, N.Y. 10128

ERIC MCPHEE, Orsid Realty Corporation

1740 Broadway (2nd Floor)

New York, N.Y. 10019

Respondents/Defendants.

Civil Action No.: Pending  
Complaint for Damages

15CV 9967

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COMPLAINT PURSUANT TO  
42 U.S.C. §§ 1983, 1985(3)

NOW COMES, Kevin Smith, hereinafter "Plaintiff", filing Pro Se, and a federal prisoner, respectfully motioning this Honorable Court to set this Complaint due to:

- 1) This is an action for damages due to trespasses of the Defendants, acting directly or indirectly, that violated the Plaintiff's Constitutional Rights, thereby action is sought via 42 U.S.C. §§ 1983 and 1985(3),
- 2) This action is set to hold each of the above named officer(s) in their individual capacity, and upon further discovery in their official capacity as well, and
- 3) Being the right of the Plaintiff to redress his grievances.

This statement is supported by the foregoing:

### JURISDICTION

This action is brought pursuant to 42 U.S.C. §§ 1983, 1985(3), 1988, and the Fourth, Fifth, Eighth, and Fourteenth Amendments to the Constitution of the United States.

This Court has subject matter of this action under 28 U.S.C. §§ 1331 and 1343(a)(1),(3), and (4).

### PARTIES

Plaintiff is a resident of New York City, New York, and at all times relevant to the allegations of the complaint was a citizen of the United States, and a resident of Manhattan County.

At all times relevant to this action, defendant detective Orongoes, Badge #4078, and other unknown Officers, was police officers employed by the North Brooklyn Gang Task Force in the 73rd Preceint, 1470 E. New York Ave., Brooklyn, New York, N.Y. 11212-5007.

At all relevant times, these defendants were acting as the agent, servant, and employee of the 73rd Preceint in northern Brooklyn, New York, N.Y.

The Defendants that were employed by the 73rd Preceint, noted above, and if it comes to light they were employed other preceint(s) with regards to the unknown names of the soon to be identified officers Plaintiff will supplement and apply such relevant facts and names, is sued in his individual, and official (if it can be proved via factual evidence) capacity.

At all relevant times, and in all their actions, the defendants, as with regards to the officers, were acting under color of law

and pursuant to their authority as police personnel.

That defendant Mr. Edwin Diaz was employed by Laura Lemle to act as superintendant of the plaintiff's residence that was a apartment building located at 1324 Lexington Ave., Apt. 18, New York City, Manhattan, New York 10128. Mr. Diaz sought out the defendant officers to attack, either directly or indirectly, and arrest the Plaintiff on false accusations, and as well on two prior occasions made knowingly false accusations that cost the Plaintiff money for lawyers fees and missed days of work, etc., etc..., in order to harass the Plaintiff for his status as a Rent Control Tennant. This will be infered on the fact that Mr. Diaz sought out police officers from another district that was approximately a hour to an hour and a half drive from the above noted residence of the Plaintiff, thereby the defendant Officers had no business being involved with the case., due to t the fact it was far outside their jurisdiction. This fact along with others explained hereafter, and in futher detail upon discovery, show the overt relationship Mr. Diaz has with the defendant officer(s).

That Mr. Diaz was in fact harassing the Plaintiff due to his status of Rent Control Apartment. And that the Plaintiff has Constitutional Interest in his Property, as outlined in the Fourteenth Amendmnet to the Constitution of the United States of America, and thus Mr. Diaz actions were in fact violations of his Constitutional Rights, futher substantied hereafter, and futher after discovery. Such action(s) of Mr. Diaz can be remedied via 42 U.S.C.A. §§ 1983, and 1985(3).

That defedant Ms. Laura Lemle is in fact the owner of the apartment of the Plaitiff, and she had the motive to directly or indirectly, harass the Plaintiff for years to force him out of his Rent Controlled Apartment, as well as the Plaintiff's mother and father. Ms. Lemle verbally threatened the Plaintiff many times, she cut his cable to his satilite dish, to poison the ally cats that lived on the streets, attempted to get the Plaitiff's mother, after his father had passed away, to sign papers to releasse the Rent Control Status of their tennantcy, and these actions were witnessed by numerous individuals, and the Plaintiff will be obtaining affidavits from, as well as visited upon other tennants also. Ms. Lemle supported Mr. Diaz's actions, and filed accusations criminally and civilly on several occassions. Her direct or indirect actions has accounted for numerous violations of the Plaintiff's Constitutional Rights of liberty of interest in property and has the status of being the main purpatrator in this instance. Such action(s) of Ms. Lemle can be remedied via 42 U.S.C.A. §§ 1983, and 1985(3).

#### LIBERAL CONSTRUANCE DOCTRINE

The Plaintiff respectfully asks this honorable Court to Liberally construe this Complaint in accordance with the United States Supreme Court standings in the following case law:

Denton v. Hernandez, 504 U.S. 25, 112 S. Ct. 1728, 118 L. Ed 2d 340(1992);

Neitzke v. Williams, 490 U.S. 319, 324 - 325, 109 S. Ct. 1827, 104 L. Ed. 2d 338 (1989);

Haines v. Kerner, 404 U.S. 519, 92 S. Ct. 594, 30 L. Ed 2d 652 (1972);

"... a federal district court is charged with liberally construing a complaint filed by a pro se litigant to allow the development of a potential meritorious case." Erickson v. Pardus, 551 U.S. 89, 94, 127 S. Ct. 2197, 167 L. Ed. 2d 1081.

#### STATEMENT OF THE FACTS

On Tuesday, January, 15, 2013, at approximately 9:30 P.M., Kevin Smith, hereinafter "Plaintiff", walked out of his building to go to Annies, which is a 24 hour market located at 1328 Lexington Avenue, Manhattan, New York 10128. Plaintiff's reason for this errand was to obtain some cat food to feed the homeless alley cats that are located on the street where the plaintiff resides.

While exiting the store with a grocery bag, containing a box of cat food and two throw away bowls, plaintiff was attacked by seven individuals right after one of the attackers yelled "Kevin". During the attack, the Plaintiff was kicked and hit numerous times for approximately two to four minutes while the Plaintiff was laying on the ground in the fetal position. During the assault the men were yelling "Where's the gun?" repeatedly and the Plaintiff was screaming back with the reply of "I don't have

a gun!!" repeatedly all while the assault kept going on. Nearing the end of the assault, the men started to pat the Plaintiff down, still requesting where's the gun, and finally one of the officers screamed out "He has no gun!", One of the men, that later came to be known to the Plaintiff as Detective Oronges, reached into his coat pocket and pulled out a gun and stated "This is your gun", and the Plaintiff stated "No that's not my gun", and Det. Orongoes stated "This is your Fucking Gun". Then the men cuffed the Plaintiff and picked him up off of the ground and dragged him to a unmarked police car, of which there were three unmarked police cars, and the group of men were part of the "Brooklyn North Gang Unit" of the 73rd Precinct, 1470 East New York Ave., Brooklyn, New York 11212-5007.

The Plaintiff was bleeding excessively from a gash that was approximately three inches in length, located on his upper right side of his forehead/brow going into his scalp/hairline.

The Plaintiff was then transported to the 19th Precinct. While being transported, Det. Orongoes stated "You can take a beating.", the Plaintiff replied "Are you guys Irish?" Det. Orongoes stated "No, I am spanish.", the other Officer stated "yeah I am." The Plaintiff then asked "This is how you treat Irish People?" Det. Orongoes then replied "Oh you really take your Irish heritage seriously." The Plaintiff stated "Yes I do."

When entering the precinct, the Plaintiff could hardly walk, so the two officers assisted the Plaintiff while he was walking very roughly, the Captain on duty seen the three of them come in and followed them until they reached the Bull Pin, and ordered that Det. Orongoes and the other officer call an ambulance for the Plaintiff

due to the amount of blood that was coming out of the Plaintiff's head and it was all over his face and neck. The Captain walked away and the two officers took the Plaintiff down the hall out of hearing range of a prisoner in the Bull Pen, who was an African American that was tall and thin in his 20's, and another prisoner, who was a African American Lady in her early 30's, who was handcuffed to a bar and sitting on a bench in the hall way right outside of the Bull Pen, and Det. Orongoes stated "We're not going to any fucking Hospital. You tell the Ambulance people you don't want to go. We don't want to be stuck there all night. And you do what we say or we will give you another beating." The officers then put the Plaintiff into the Bull Pin.

When the ambulance people showed up, it was a Spanish lady and the Plaintiff is unsure of the other person who was with the Spanish Lady, this was due to the blood in the Plaintiff's eyes, but there were two of them, the Spanish Lady walked up and seen the Plaintiff and upon sight she immediately turned around and went back to the Ambulance to retrieve gauze and bandages. The Spanish Lady first wrapped the Plaintiff's head the best she could and she stated "lets go, I have the Ambulance outside, come on, lets go." The Plaintiff replied "No", because the Detective and the other officer were standing right there watching. The Spanish Lady then asked "What happened to you?" The Plaintiff stated "Oh, I just slipped and fell." The African American Lady sitting on the bench handcuffed to the rail gave the Plaintiff a crazy look, and so did the Spanish Lady. The Plaintiff then picked up his pant legs and showed the Spanish Lady his knees, and both the Spanish Lady and the African



American Lady both made a sound of disbelief upon seeing the lacerations on his keens. The Plaintiff asked her if she had any peroxide to clean up the lacerations and she stated "No, come on lets go to the Hospital and get you some help," and the Plaintiff again told her "No" and she became frustrated and angry with the Plaintiff and insisted many more times that the Plaintiff should go to the Hospital and get treatment for the severe lacerations. the Plaintiff stated time and time again "no". The Spanish Lady then asked the Plaintiff to sign the refusal form and so the Plaintiff did.

After the Ambulance people left, the Detective and the other Officer took the Plaintiff to have him fingerprinted and take a photograph of him. During the process, the Detective and Officer were trying to insight the Plaintiff by yelling at him and being very rude as well as aggressive. The Plaintiff, while in extreme pain went along with their commands and the Captain and other Officers witnessed this . The Plaintiff was then escorted very roughly by the Detective and the other Officer, back to the Bull Pin.

The Detective and the other officer came back approximately one hour later and handcuffed the Plaintiff and assisted the Plaintiff very roughly again to the unmarked vehicle. They all went to Central Booking, the drive took approximately twenty minutes. When arriving the Detective and the other Officer took the Plaintiff out of the vehicle and assisted the Plaintiff again very roughly in to the building. When entering the room for receiving, the recieving Officer, a spanish male, upon sight stated "Whoa, whoa, your not bringinhim in here like that!" This reaction was due to the amount



of blood covering the Plaintiff's face and neck, and he was still bleeding from the laceration on his head. The Detective and the other officer took the Plaintiff out of the room and down a hallway outside a bathroom, the other Officer went in and retrieved some wet paper towels. He then proceeded to wipe and scrub the Plaintiff's face and neck violently for approximately 5 to 10 minutes. The officer kept going back to get more paper towels several times, this was due to the amount of dried blood on his face and neck. The Detective and the other officer then took the Plaintiff back to the receiving room and the Detective and the other officer, took the Plaintiff to a cell with the receiving officer.

At approximately 2 to 5 a.m. the next morning, January 16, 2013, the Plaintiff was taken for arraignment, at which during the hearing the District Attorney stated that the information that brought the officers to the supposed suspicion came from a Mr. Edwin Diaz, who was the Superintendant for the Plaintiff's Apartment Building where he resided, who also worked for the police department as a Confidential Informant.

The Plaintiff has had other false reports made by Mr. Diaz and all of them were dismissed. One was for a Criminal Mischief case, and another case involving two counts for Aggravated Harassment-2nd: Communicate-Phone/Telegraph/Written Com to Annoy/Alarm, and Aggravated 2nd: Cause Communication with a person to annoy/alarm. And the actions of Mr. Diaz were incited by his employer and the owner of the apartment building where the Plaintiff formerly used to reside, located at 1324 Lexington Ave. Apt. 18, New York City, Manhattan, New York 10128, via direct and indirect actions in a concerted action to remove the Plaintiff from his rightful

tenancy of a statutory protected class of citizens via New York Rent Control Laws, and that the rent was to stay the same from the original price from the instance that his parents moved in to the said apartment, Plaintiff's parents being Micheal and Hellen Smith, and the Plaintiff being the surviving son presiding at the residence prior to his parents passing away and maintaining residence after. The Land Lord/Owner of the said apartment building, being Laura Lemle had in fact been harassing the Plaintiff's parents for years to force them out of the apartment due to the status of the tenants being rent control and not rent stabulization.

Laura Lemle had performed acts of harassmt from cutting the tennants cable satleelite dish cable, to seeking civil suits, verbal threats, to the Plaintiff and a numerous other tennants. But, one has to prove the nexus to create and prove the facts to incurr a inference of conclusion and this is proven via Mr. Diaz, in that Mr. Diaz came after the Plaintiff and pursued numerous false allegations that lead to the situation of the Plaintiff being assaulted by people that were operating under the color of law, and this is factual, due to the obvious facts that anyone would come to the inference to inquire of "Why were the Officers of the North Brooklyn Gang Task Force doing in Upper E. Side Manhattan, an hour to an hour and half driving distance from their jurisdiction, steaking out the Plaintiff for a possession of a firearm by a felon accusation?" This will not only be shown by this clear and overt fact, but via other facts that the Plaintiff will supplement in the event of Discovery into the facts. But the one that is plain at this moment is the Officers stated herein had no business in E. Side Manhattan!

to further show the statements herein to be true that Laura Lemle's actions could infer such motives are that :

- 1) Laura Lemle had the Plaintiff fired from his job that he was employed at for 12 years,
- 2) The supervisor before Eric Mcphee never had a problem with the Plaintiff; the former supervisor being Espina,
- 3) Laura Lemle had filed a civil suit on the Plaintiff for frivolous acts, in which the Plaintiff had to pay an attorney \$3,500.00 for,
- 4) The fraudulent charges pursued by Lori Lemel and her employee, Mr. Diaz,
- 5) On numerous occasions Laura Lemle attempted to and did create false claims that the Plaintiff was not paying rent, and in fact pursued eviction for the false claim of non-payment of rent, and numerous times for several other tenants.

Thus, the motive of the basis of the above stated facts infringe upon the Plaintiff's established Constitutionally Protected Right, that was and is protected via New York Statute as well, via rent control laws. The Plaintiff was under the protection of this law and still is. The Plaintiff had also filed a civil suit for Laura Lemle for overcharging him with rent in excess of \$1,200.00 dollars a month for many years to incur an amount totaling at \$276,000.00 dollars. The Plaintiff has been making inquiry into this instance for years prior to the filing of suit verbally with Laura Lemle.

### FEDERAL THEORIES OF RECOVERY

The action(s) and omission(s) described above, the defendants engaged in acts, directly or indirectly, under color of state authority by the defendants in a concerted action, and thereby deprived the Plaintiff overtly of his rights secured to him by the Constitution of the United States of America, as well as various state statutes, including, but not limited to, the Plaintiff's:

- a. Fourth Amendment right to be free from unlawful search and seizure of his person;
- b. Fifth and Fourteenth rights to due process of law, including the right to be free from unjustified and excessive force utilized by police; and this standard is set via the Eighth Amendment standards,
- c. The Fourteenth Amendment right to property interest.

### STATE LAW THEORIES OF RECOVERY

The Plaintiff would like to reserve his right to supplement upon further discovery of the possible state recovery that Plaintiff can request under supplemental jurisdiction.

)PRAYER FOR RELIEF

The Plaintiff Prays for this Honorable Court to fist and foremost grant the Plaintiff the opportunity to request Interrogatories as well as other Discovery materials that will futher substantiate his claim(s) against the known and unknown trépassers of the Plaintiff's Constitutionally and Statutory Protected Rights, in order to hold accountable all of the People that wronged him and create justice for these inherant wrongful ilwill torts.

As it stands at this point, the Plaintiff demands the following relief:

- A. Compensatorial Damages in the Amount of \$400,000.00.
- B. Punitive Damages in the Amount of \$25,000,000.00
- C. Attorney fees pursuant to 42 U.S.C.A. § 1988,
- D. An award of the plaintiff's costs of all suits, whom it may be applicable, and,
- E. All other relief that is appropriate and proper under the circumstances.

Respectfully Submitted on this the 11 day of December, 2014,

Kevin P. Smith  
Kevin Smith Reg. No. 32952-054  
FCI-Allenwood  
P.O. Box 2000  
White Deer, PA 17887-2000